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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1280

[No.AMS-LS-11-0038]

Lamb Promotion, Research, and Information Order; Amendment to the Order to Raise the Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Lamb Promotion, Research, and Information Order (Order) to increase the assessment rate on all live ovine animals sold from \$.005 per pound to \$.007 per pound for producers, feeders, and seedstock producers, and from \$.30 per head of ovine animals purchased for slaughter to \$.42 per head for first handlers. The increase is provided for under the Order, which is authorized by the Commodity Promotion, Research, and Information Act of 1996 (Act). The American Lamb Board (Board), which administers the Order, recommended this action to maintain and expand their promotional, research, advertising, and communications programs.

DATES: Written comments must be received by [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments must be posted online at www.regulations.gov or sent to Kenneth Payne, Director, Marketing Programs Division, Livestock and Seed Program, Agricultural Marketing Service (AMS),

USDA, Room 2628-S, STOP 0251, 1400 Independence Avenue, SW, Washington, D.C. 20250-0251; or fax to (202) 720-1125. All comments should reference the docket number, the date, and the page number of this issue of the *Federal Register*. Comments will be available for public inspection at the aforementioned address, as well as on the Internet at <http://www.regulations.gov/>.

FOR FURTHER INFORMATION CONTACT: Emily DeBord, Agricultural Marketing Specialist, Marketing Programs Division, on 202/720-1115, fax 202/720-1125, or by e-mail at emily.debord@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not established in accordance with

the law, and may request a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within 2 years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary of Agriculture (Secretary) will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic effect of this action on small entities. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened.

In the February 2011 publication of "Farms, Land in Farms, and Livestock Operations," the U.S. Department of Agriculture's (USDA) National Agricultural Statistics Service (NASS) estimates that in 2010 the number of operations in the United States with

sheep totaled approximately 81,000. The majority of these operations that are subject to the Order may be classified as small entities.

The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (handlers and importers) as those having annual receipts of no more than \$7 million. Under these definitions, the majority of the producers, feeders, seedstock producers, and first handlers that would be affected by this rule would be considered small entities

Funds collected under the programs are used for promotion, information, research, and advertising of American lamb and for the administration, maintenance, and functioning of the American Lamb Board (Board). At the current assessment rate of one-half of a cent (\$.005) per pound on all live lambs sold by producers, feeders, and seedstock producers and thirty cents (\$.30) per head of lamb purchased by first handlers for slaughter, the program generates about \$1.8 million in annual revenues. The current assessment rate was established in April 11, 2002, when the Order was issued (70 FR 17848). The Order is administered by the Board under USDA oversight. According to the Board, additional revenue is required in order to sustain and expand the promotional, research, advertising and communications programs. On May 26, 2011, the Board passed a motion to raise the assessment rate as

authorized under the Act and Order. This proposed rule is consistent with section 1280.217(e) of the Order, which states that the rate of assessment for producers, seedstock producers, and feeders may be raised or lowered no more than twenty-hundredths of a cent (\$.002) in any one year. In addition, section 1280.219 states the rate of assessment for first handlers shall be increased or decreased proportionately if the assessment paid by producers, feeders, and seedstock producers is increased or decreased. The current rate producers pay on a per pound basis, \$0.005 per pound, is 1.67 percent of the rate first handlers pay on a per head basis, \$0.30 per head. To keep the same proportionality when producers are assessed a rate of \$0.007 per pound, the first handlers would be assessed a rate of \$0.42 per head. Currently, section 1280.217 of the Order states that the rate of assessment shall be one-half of a cent (\$.005 per pound) per pound on all live lambs sold. Section 1280.219 currently states each first handler, in addition to remitting the assessment collected pursuant to section 1280.217, shall pay an assessment equal to thirty cents (\$.30) per head of lambs purchased by the first handler for slaughter or slaughtered by such first handler pursuant to a custom slaughter arrangement. This proposed rule would amend the aforementioned sections. The Board's most recent return on investment study, *Analyzing the Effectiveness of the Lamb Promotion, Research, and Information Order*, by Oral Capps, Jr. and Gary W. Williams, showed that for

the period 2002 through 2010 the Lamb Checkoff Program continued to enhance the demand for American lamb. The analysis shows that the Board's promotion programs have generated roughly 7.1 to 7.5 additional pounds of total lamb consumption per dollar spent on advertising and promotion and \$37.16 to \$39.34 in additional lamb sales per dollar spent on advertising and promotion. Copies of this study can be obtained from the Board.

Over the last several fiscal years, however, several trends have asserted downward pressure on the Board's continued ability to sustain the industry's recognized high level of return. Domestic lamb production levels have continued to decrease. A growing percentage of domestic lamb is being sold into non-traditional markets and higher costs driven by worldwide inflation have increased the expense of implementing Board programs. The Board's assessment collections have continued to decrease from \$2.8 million in 2003 to \$2.0 million in 2010. Over the past few years the Board's budget has decreased and business costs have increased. The Board has explored ways to maintain effective programs by cutting programs that are not meeting the Board's expectations. The Board believes that marketing and promotions programs should not be reduced any further at a time when it is critical for the industry to protect American lamb's position in retail and foodservice and maintain market share.

The Board states that the proposed assessment rate increase would enable it to maintain, enhance, and expand its efforts to

build demand, increase awareness and create preference for American lamb through targeted advertising, retail promotions, public relations campaigns and media outreach, foodservice programs, consumer events, social marketing, and nutrition education. The Board strongly believes that it is a critical time for the industry to protect their position in retail and foodservice and maintain market share in order for there to be a future for domestic lamb. The Board believes that it is essential to increase the lamb checkoff revenue and get its marketing and promotion budget back to the original budget levels in fiscal years 2003 and 2004 in order to maintain its efforts to promote American Lamb and deliver a good return on the industry's investment.

This rule does not impose additional recordkeeping requirements on producers, feeders, seedstock producers, or first handlers of American lamb. There are no Federal rules that duplicate, overlap, or conflict with this rule. In accordance with OMB regulation [5 CFR Part 1320], which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements have been approved previously under OMB control number 0581-0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved. We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed amendment to the Order on small

entities, and we invite comments concerning potential effects of this amendment on small businesses.

Background and Proposed Action

Under the Order, which became effective April 11, 2002, the Board administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen the position of, and to develop and expand the markets for, ovine animals and ovine products. This program is currently financed by assessments from producers, feeders, and seedstock producers who pay an assessment of one-half cent (\$.005) per pound when live ovine animals are sold. First handlers, primarily packers, pay an additional \$.30 per head on ovine animals purchased for slaughter. Importers are not assessed.

This rule proposes to increase the assessment rate on all live lambs sold from \$.005 per pound to \$.007 per pound for producers, feeders, and seedstock producers and from \$.30 per head of lamb purchased for slaughter to \$.42 per head for first handlers. According to the Board, in order to sustain and expand the promotion, research, and communications programs at present levels, the Board contends that additional revenue is required. The proposed assessment rate increase is estimated to generate \$700,000 in new revenue, depending upon production levels.

The Board's budget is based on the amount of assessments collected on an annual basis. As assessments have continued to decline, the Board's budget has decreased from \$2.8 million in

2003 to a projected \$1.8 million in 2011. As expenses to successfully promote and increase the consumption of American lamb continue to rise, the Board feels it is necessary to amend the Order to increase the rate of assessment.

On May 26, 2011, the Board unanimously approved a motion to request that the Secretary amend sections 1280.217 (e) and 1280.219 of the Order to increase the assessment rate on all live lambs sold from \$.005 per pound to \$.007 per pound for producers, feeders, and seedstock producers and from \$.30 per head of lamb purchased for slaughter to \$.42 per head for first handlers. The Board has not amended the Order to raise or lower the assessment rate since the inception of the program. The vote to recommend the assessment increase was unanimous.

The Act provides for the creation of and amendments to the Order. The Order provides in section 1280.210 that the Board shall have the powers and duties to recommend to the Secretary such amendments to the Order as the Board considers appropriate.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this rule by the date specified would be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1280

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Lamb and Lamb products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that 7 CFR part 1280 be amended as follows:

PART 1280--LAMB PROMOTION, RESEARCH, and INFORMATION

1. The authority citation for 7 CFR part 1280 continues to read as follows:

Authority: 7 U.S.C. 7411-7425

2. §1280.217, paragraph (e) and §1280.219 are revised to read as follows:

§1280.217 Lamb Purchases.

(e) Rate. Except as otherwise provided, the rate of assessment shall be seven-tenths of a cent (\$.007 per pound) per pound on all live lambs sold. The rate of assessment may be raised or lowered no more than twenty-hundredths of a cent (\$.002) in any one year. The Board may recommend any change to the Department. Prior to a change in the assessment rate, the Department will provide notice by publishing in the FEDERAL REGISTER any proposed changes with interested parties allowed to provide comment.

§1280.219 First Handlers.

Each first handler, in addition to remitting the assessment collected pursuant to §1280.217, shall pay an assessment equal to forty-two cents (\$.42) per head of lambs purchased by the first handler for slaughter or slaughtered by such first handler pursuant to a custom slaughter arrangement. The rates of

assessment for first handlers shall be increased or decreased proportionately. If the assessment paid by producers, seedstock producers, and feeders is increased or decreased. Such assessment shall be remitted with the assessments collected pursuant to §1280.217.

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Dated: June 6, 2012

David R. Shipman
Administrator
Agricultural Marketing Service

[FR Doc. 2012-14187 Filed 06/11/2012 at 8:45 am; Publication
Date: 06/12/2012]